

Article 2A.

Annuities and Deferred Compensation for Teachers and State Employees.

§ 147-9.2. Definitions.

The following words when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

- (1) "Board" shall mean the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan established pursuant to Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.
- (1a) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any employer, or an agent of such chief executive officer duly authorized to enter into the contracts with teachers or State employees referred to in G.S. 147-9.3 and 147-9.4.
- (2) "Employee" shall mean a permanent employee of the State of North Carolina, or of any of its departments or agencies, or of any of its wholly owned institutions and instrumentalities.
- (3) "Employer" shall mean (i) the State of North Carolina, its departments and agencies, and its wholly owned institutions and instrumentalities or (ii) a local board of education.
- (4) "Plan" shall mean the North Carolina Public Employee Deferred Compensation Plan.
- (5) "Teacher" shall have the meaning provided in G.S. 135-1(25). (1971, c. 433, s. 1; 1983, c. 559, s. 2; 1991, c. 389, s. 1.)

§ 147-9.3. Annuity contracts; salary deductions.

Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b)(1)(A)(i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 2; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 112; 2006-221, s. 3A; 2006-259, s. 40(a).)

§ 147-9.4. Deferred Compensation Plan.

(a) Notwithstanding the provisions of G.S. 143B-426.40A and notwithstanding any provision of law to the contrary relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may enter into a contract with a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his or her scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before January 1, 1983, and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his or her election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his or her election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section.

(b) Notwithstanding the provisions of G.S. 143B-426.40A and any provision of law to the contrary relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may contribute to a deferred compensation account of a teacher or employee additional funds, not in excess of limitations under federal law; provided that for State and federal income taxes purposes, the funds are not constructively received by the teacher or employee in the year in which

the funds were earned. (1971, c. 433, s. 3; 1983, c. 559, s. 3; 1985, c. 660, s. 4; 1989, c. 792, s. 2.10; 1991, c. 389, s. 1; 2006-66, s. 6.19(a); 2006-203, s. 113; 2006-221, s. 3A; 2006-259, s. 40(a); 2017-129, s. 7.)